IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition 13670 of 2006

Date of decision: 13.10.2006.

M/s VS Saini Engineers, Govt Contractors and ors …Petitioners

Versus

State of Punjab and ors …Respondents

CORAM: HON'BLE MR JUSTICE S.S.NIJJAR.
HON'BLE MR JUSTICE S.S.SARON.

Present: Mr RS Manhas, Advocate for the petitioner.
Mr AS Grewal, Additional AG Punjab for respondents-1 and 2.
Mr IS Ratta, Advocate, for respondents-3 and 4.

S.S. SARON, J.

The petitioners in this petition under Article 226 of the Constitution of India pray for issuance of a direction to respondents-2 and 4 i.e. the Director Local Bodies and the Municipal Council, Pathankot through its President to issue tender forms and further entertain the same after considering the bids submitted by them. A further prayer is made restraining respondents-3 and 4 not to take any action against the tenders.

The petitioners-firms are government contractors and challenge the action of the respondents in not issuing the tender forms to them which were invited in the State of Punjab. The petitioners are registered government contractors having their business at Pathankot. Petitioner No.3 is also having his main office at Nurpur in the State of Himachal Pradesh. All of them are enlisted as 'A' Class contractors and are working as contractors of Local Bodies, Municipal Council, etc. The Municipal Council, Pathankot issued a

short term tender notice (Annexure P1) for 18 works as mentioned therein. It is stated by the petitioners that the tender forms, it was mentioned, shall be issued upto 11 a.m. on 25.8.2006 and that the same were to be issued to the contractors registered with the Municipal Council upto 3 p.m. Besides, they were to be opened on the same day in the presence of the intended parties. The petitioners submitted their applications dated 25.8.2006 (Annexures P2 to P4) for issuance of tender forms. It is alleged that the respondents did not issue the tender forms to the petitioners and these were issued only to firms/contractors in whom the Municipal Council was interested to allot their work. M/s Shivam Construction Company, Pathankot and Sandeep Kumar Dhawan are stated to have been issued the tender forms as they are close to the local MLA of Pathankot. It is alleged that the tender forms were deliberately not issued to the petitioners. In fact, the petitioners had done various works of the Municipal Council and are competent firms to execute the work. They have the infrastructure also to carry out the work. On coming to know of the ill-intentions of the respondent-Municipal Council, the petitioners sent telegrams to higher authorities regarding non-issuance of tender forms. On the failure to receive the tender forms, they have approached this Court.

Notice of motion was issued in the case on 29.8.2006 for 8.9.2006. On the adjourned date, on the statement made by counsel for the petitioners, the name of the local MLA who was impleaded as respondent-5 was deleted from the array of parties. As an interim measure, it was directed that tender forms be issued to the petitioners and further action taken shall be subject to the out-come of the present petition.

Written statement has been filed by the Executive Officer of the Municipal Council, Pathankot on behalf of respondents-3 and 4. It is stated that the correct facts are that the petitioners had failed to approach and apply

for the sale of tender forms upto the stipulated time of 1.30 p.m. on 25.8.2006. Therefore, out of frustration, they had made false complaints to the Director Local Government (respondent-2). The tender relating procedure had been conducted on 25.8.2006 in the presence of staff of Municipal Council, Pathankot which included the President, Executive Officer, Assistant Engineer (AME), 3 JEs and 2 Clerks. Besides, a representative from the office of the Deputy Director Urban Local Bodies, Amritsar was also present. In no way, could all these officers/officials, representative have joined hands so as to help a few contractors against the interest of the petitioners. The Director, Local Bodies (respondent-2) had sought comments and a report dated 30.8.2006 (Annexure R4) was submitted. It was stated that the complaint was false and baseless. A reference is also made to the Public Notice (Annexure P1) in which it was stated that registered contractors had to apply for the sale/issuance of the tender forms upto 1.30 p.m. only and not upto 3 p.m., as alleged by the petitioners. It is also stated that in consequence of the interim order dated 8.9.2006 passed by this Court for the issuance of tender forms to the petitioners, two of the petitioners i.e. M/s VS Saini (petitioner No.1) and M/s Walia Construction Company (petitioner No.2) approached the office of the Municipal Council, Pathankot, in the late evening on 18.9.2006 just a few hours before hearing of the case by this Court on 19.9.2006. The said petitioners submitted their request letters and they did not request for supply/sale of tender forms. The letters (Annexure R12 and R13) filed by the said petitioners have been placed on record. It is stated that the real intention of the petitioners is to harass their competitors and in the process the repair work of the town is suffering.

We have heard learned counsel for the parties and given our thoughtful consideration to the matter.

The Municipal Council, Pathankot issued a short term tender notice (Annexure P1) with respect to 18 works as mentioned therein. It was inter alia provided in the said notice that the tender forms shall be issued upto 11 a.m. on 25.8.2006. Besides, if the requisite of the Cooperative L/C Societies registered with the Municipal Council do not come forward, the tender forms would be issued to the said category/class upto 1.30 p.m. and received upto 3 p.m. The tender forms were to be opened on the same day in the presence of the intending parties or their representatives who may desire to be present at that time. The case set up by the petitioner, however, is that the tender forms as mentioned in the short term tender notice (Annexure P1) were to be issued to the contractors registered with the Municipal Council upto 3 p.m. This in fact is not the position as depicted in the said notice (Annexure P1). It may also be noticed that this Court in terms of order dated 8.9.2006 as an interim measure directed that the tender forms be issued to the petitioners and further action taken shall be subject to the out come of the petition. The petitioners have not placed any material on record to show that as a consequence of order dated 8.9.2006 passed by this Court, they had approached the Municipal Council, Pathankot for the supply of tender forms. The Municipal Council has filed the written statement wherein it has taken a categoric stand that 2 of the petitioners i.e. M/s VS Saini Engineers (petitioner No.1) and M/s Walia Construction Company (petitioner No.2) had approached the office of the Municipal Council, Pathankot late in the evening of 18.9.2006 just a few hours before the hearing of the present petition in this Court on 19.9.2006. The petitioners submitted their request letters (Annexures R12 and R13) for supply/sale of tender forms. In the said letter dated 18.9.2006 (Annexures R12 and R13), they had in fact submitted as follows:-

> "Tenders for the Road works in question may please i.e. re-invited under intimation to us, in the light of High Court of Punjab and Haryana, Chandigarh, order dated 15 Sep 2006, on civil writ petition No.13670 of 2006 - M.C. V.S. Saini Engineer (copy enclosed)."

A reading of the above contents of the letter submitted by two of the petitioners would in fact show that they had not made any request for the supply of tender forms and rather they wanted that the tenders for the road works should be re-invited. Besides, a reference is made in the said letter to an order dated 15.9.2006 passed by this Court. However, no order was passed by this Court on 15.9.2006. The order in fact was passed on 8.9.2006 and was for directing the respondents to issue tender forms to the petitioners. The respondents have stated that a bare perusal of the letters (Annexures R12 and R13) would show that instead of complying with the directions as issued by this Court on 8.9.2006, the petitioners had sought to circumvent the issue. Besides, it was clear that their real aim was to harass their competitors. Moreover, in the process, repair work of the town was suffering. It is further stated that the answering respondents i.e. respondents-3 and 4 be permitted to get the work completed without any further delay. The petitioners have not filed any replication to controvert the said assertions of the Municipal Council. Therefore, the assertions made by the Municipal Council, Pathankot in its written statement to the effect that the petitioners are circumventing the issue and their aim is to harass their competitors cannot be said to be without basis. Besides, it has been stated that the repair work of the town is suffering. The award of contract by a public body or State is essentially a commercial transaction. This Court does not sit as a Court of appeal against the decision taken by the public bodies or State to award a contract. The invitation to tender

is in the realm of contract. The government and the public bodies have freedom to contract subject to fair play. Despite the order dated 8.9.2006 directing the respondents to issue tender forms to the petitioners, they had approached the respondents on 18.9.2006 just a day prior to the hearing of the present petition before this Court. In their letters (Annexures R12 and R13), they did not seek or ask for the supply of tender forms and rather sought re-invitation of the tenders. Besides, they quoted the order of this Court as dated 15.9.20906 instead of 8.9.2006 probably with a view to cover the delay in approaching the Municipal Council after passing of the order by this Court on 8.9.2006. All these circumstances show that the petitioners are indeed disinterested to carry out the work for which short term tender notice (Annexure P1) has been issued. Besides, there is nothing on record to show that the respondents have acted in an unfair manner towards the petitioners.

For the foregoing reasons, there is no merit in this petition and the same is accordingly dismissed.

(S.S.NIJJAR)
ACTING CHIEF JUSTICE

13.10.2006. (S.S.SARON)
ASR JUDGE

WHETHER FIT FOR INDEXING : YES/NO